IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 360 of 1990
WITH
CIVIL APPLICATION No. 2716 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HEIRS OF THE DEC. DWARKADAS KARAMSHI, VADILAL DWARKADAS AND OTHERS
Versus
REVASHANKAR AMULAKH KOTHARI

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Appearance :
MR JR NANAVATI for Applicants.
RULE SERVED for Opponent.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 01/03/2006

ORAL JUDGMENT

By filing this Civil Revision Application under Section 115 of Civil Procedure Code, the applicants, who are the judgement-debtors of Civil Suit No.159/1979, have challenged the order passed by the Small Causes

Court, Rajkot on 5-3-1990 in Darkhast No.15/1989. One Revashankar Amulakh Kothari instituted a suit for getting decree for possession against the tenant on various grounds. The trial Court passed a decree for eviction on the ground of arrears of rent as well as the trial Court also fixed standard rent at Rs.12.50 per month. Appeal against the decree was partly allowed by the appellate Court and decree for eviction was set aside. Against said order of the appellate Court, the plaintiff preferred revision application before this Court being Civil Revision Application No.1298/1984, which was dismissed by this Court on 17-1-1985. Against the said order of this Court, appeal was preferred before the Supreme Court being Appeal No.2633/1987, wherein the Supreme Court has passed an order, which is produced before the Executing Court at Exh.6. The Supreme Court passed the following order on 25th September, 1987 in aforesaid Appeal, which is incorporated in the revision memo.

> "Having heard learned counsel for both the parties and having considered the facts and circumstances of the case, we find no ground to interfere with the order of the High Court. In the premises these appeals are dismissed. But at the same time we are of the opinion that the rent payable in respect of the premises in question is low. Keeping in view the escalation in prices we direct the respondents will pay Rs.250/- in all for two portions, Rs.75/- for the smaller portion and Rs.175/- for the bigger portion. This order will come into force from September, 1987. The payment will be made on 10th of each succeeding month. In default of three monthly payments the landlords shall have the right to proceed for eviction against him by execution. This order will

be for the period of next two years. Thereafter ordinary law will prevail. The decree shall stand modified accordingly. But there will be no order as to costs."

The landlord, thereafter, filed an execution application on the ground that the said order was not complied with. The executing Court after overruling the objection of the judgement-debtor came to the conclusion that the decree holder is entitled to enforce and execute the decree for possession on the ground of default in non-observing the obligation imposed upon the judgement-debtor by the order of the Supreme Court. It is against the aforesaid order, this revision application is filed.

Mr.Nanavati, learned advocate appearing for the applicants submitted that during the pendency of this revision application, the applicant-tenant approached the Supreme Court by way of appropriate application and the Supreme Court extended the time and passed the following order, which is produced by Mr.Nanavati before the Court.

"After considering the material on record we are satisfied that there has been an inadvertent delay on the part of the tenants in remitting rents by M.O. or paying in cash. We condone all that delay upto the date.

To avoid further difficulty in payment, we direct the landlord to give his account number to the tenants so that they could deposit the monthly rent to that account. We also direct that if the landlord does not give his account number, the tenants are entitled to open an account in any Bank in the

name of the landlord on the strength of this order.

Interlocutory applications are disposed of accordingly."

Since the order of the Supreme Court is subsequent to the order passed by the executing Court now the matter is required to be sent back to the Executing Court for reconsideration of the issue in light of the order of the Supreme Court. In that view of the matter, this matter is sent back o the Executing Court to decide the execution of the landlord afresh in light of the Supreme Court order dated April 9, 1990 passed in Civil Appeal No.2633-34/1987. It is for the Executing Court now to decide the effect of the aforesaid order of the Supreme Court in pending execution application. Since the order of the Supreme Court is subsequent to the filing of this revision application as well as subsequent to the order of the executing Court, matter is required to be reconsidered by the executing Court. Since the proceedings are very old one, the Executing Court may now take appropriate decision in accordance with law within a period of three months from the date of receipt of writ from this Court.

Accordingly, this Civil Revision Application is allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs. Record and proceedings, if received, may be sent back to the Executing Court forthwith.

In view of the above order in main Civil Revision Application, no order on Civil Application No.2716 of 1990.

(P.B.MAJMUDAR, J.)

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